



Atty. Dkt. No. 084561-0103

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Applicant: Mark Landesmann  
Title: BUYER-DRIVEN TARGETING  
OF PURCHASING ENTITIES  
Appl. No.: 09/758,239  
Filing Date: January 12, 2001  
Examiner: Khanh H. Le  
Art Unit: 3622  
Confirmation Number: 7844

**REPLY BRIEF**

Mail Stop Appeal Brief - Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Appellant stands by his Brief and all of the various distinctions listed therein.  
However, Appellant wishes to respond to several arguments made in the Examiner's Answer.

**Claims 181 196, 197, 198 and their Dependent Claims: NO "DISTRIBUTION  
PRIORITY" IN DAY**

Day does not disclose a "*distribution priority*" as required in three elements of claim 181. Day teaches that a "special offer" continues to be made to a household until a maximum quantity has been redeemed. See the examiner's citation of Day at column 14, lines 52-58:

"FIGS. 12-14 are flow chart illustrating transactional analysis that takes place at a check-out (point of sale terminal). A determination is made whether a household has redeemed a special offer up to the maximum quantity for which the special offer was available. If so, the household will not see that special offer again unless the manufacturer reinstates it."

This describes a special offer by Day that is being offered over and over again until the maximum quantity has been redeemed, after which it is not shown to the household. There is nothing about a priority relative to other ads.

Appellant's claim 181 claims a "*distribution priority*," i.e., a distribution that has been prioritized. See ordinary meaning of these words in the dictionary definitions Websters' II New College Dictionary, Houghton Mifflin Company 1995: "1. Precedence, esp. established by order of urgency or importance." See also the specification quotes in the Main Brief on the meaning of this term.

The claim recites the steps of "*for each of a second plurality of the buyer entities, selecting a plurality of incentives ...*" and "*electronically determining a particular distribution priority associated with each of the incentives for each of the buyer entities ...*" It makes no sense in the context of the claim to select incentives from a group of incentives, and then decide not to offer then to the buyer entity. This step is followed by the step "*causing the distributing of a plurality of the incentives, with each incentive distributed at least in part based on its associated distribution priority for the buyer entity.*" Aside from the ordinary meaning of the term, in the context of these claim steps, the term "*distribution priority*" could not mean "1" or "0."

**CLAIM 193 and Dependent Claims: DAY DOES NOT HAVE AN "INTERFACE"**

Computer-implemented method dependent claim 193 calls for "*an interface provides access for the advertisers to a database.*" The examiner cites a definition in DICTIONARY.COM for the proposition that the interface can be a person. The definition, reads as follows:

"Computer Science.

- a. The point of interaction or communication between a computer and any other entity, such as a printer or human operator.
- b. The layout of an application's graphic or textual controls in conjunction with the way the application responds to user activity: an interface whose icons were hard to remember."

The examiner's definition states that an interface can be a point of interaction, i.e., it is in-between a computer and a human operator. This is not met by the reference in

Day to human administrators contacting various manufacturers. See also applicant's specification.

**CLAIM 198: DAY DOES NOT DISCLOSE PURCHASE DATA RECEIVED FROM BUYER ENTITY**

In addition to no disclosure of the “distribution priority” limitation, claim 198 requires that the score is “electronically calculated based on data corresponding to purchase records received from the associated buyer entity.” The citation in the Examiner's Answer for this limitation is Day, column 7, line 66 – column 8, line 30. But this section in Day discloses only a system monitoring purchases made within the system itself. It has nothing to do with receiving purchase records from the buyer entity. The Examiner's Answer also identifies column 4, lines 46-47 as meeting this limitation. But this citation only relates to the customer carrying a machine-readable identity card to identify the customer and his/her home store and says nothing about submitting purchase records.

Note that the buyer entity submission is important in that it allows the buyer entity to control his/her profile within the system and also inherently brings in a permission by the buyer entity to use those records in the system profile for that buyer entity, thereby eliminating steps imposed by legal authorities to obtain permission. These advantages to the limitation don't have to be claimed. They are inherent in the limitation.

**CLAIM 182: NEITHER DAY NOR GOLDHABER DISCLOSE DISABLING RECEIPT OF PURCHASE RECORDS**

Neither Day nor Goldhaber discloses receipt of purchase records from the buyer entity. Additionally, both systems must record purchases and payments made within their respective systems. Thus, they could not “*disable the receiving of said data if said data is not received directly from the buyer entity,*” as recited in the claim 182.

**CLAIM 189: NEITHER DAY NOR GOLDHABER DISCLOSE THIS LIMITATION**

The Examiner's Answer on this claim is not understood. There is no “manual” limitation in this claim.

**CLAIMS 220-223:**

Appellant stands by the arguments in his Appeal Brief. These claims call for a system based on different parameters, resulting in a different system.

**CLAIMS 213-214: INCENTIVE BASED ON LOCATION OF WIRELESS DEVICE**

Claim 213-214 require that the electronic decision as to which incentive to offer must be made at least in part “*based on location information associated with the location of the wireless device.*” This language means that the electronic decision maker must receive information from a cell phone tower or other addressing means to determine the cell phone location, and then select the incentive based on that location.

Weinblatt certainly does not disclose this feature.

It is not proper for the examiner to take Official Notice of obviousness at a key point of novelty for this claim. As the non-precedential MPEP points out, such Official Notices “should be rare,” and should be capable of “instant and unquestionable demonstration.” The MPEP further states that “assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art.”

Applicant timely traversed this Official Notice when it was initially made. The examiner never commented on the traverse or stated that she considered it inadequate. The first notice provided to Applicant was in the Examiner’s Answer that was responding to a Brief where reasons for the traversal were presented. Note the procedural impropriety of the non-precedential MPEP requiring the Applicant to prove a negative when the examiner has taken such an improper Notice.

The examiner now cites Fano, U.S. Patent No. 6,317,718, for the first time in the Examiner’s Answer. Fano relates to position-based shopping wherein the user inputs an item of interest, and then the system responds by determining the location of the user and provides offers of that item from stores in his area. It does not relate to offering at least “*one benefit in exchange for at least one action associated with a purchase.*”

**CLAIMS 215-218: THREE NEW REFERENCES CITED**

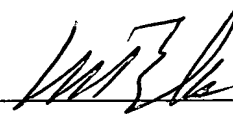
The examiner again took Official Notice of obviousness at a key point of novelty in these claims. Applicant again timely traversed this Official Notice and requested documentary support. The examiner again failed to state that Applicant's traverse was inadequate. The first notice provided to Applicant was in the Examiner's Answer responding to a Brief where reasons for the traversal were presented. Examiner's Answer for the first time cited three new prior art patents. The motivation to combine such diverse references is just not present.

For the foregoing reasons and the reasons cited in the Appeal Brief, the Examiner's rejections are erroneous based on the art, and reversal of the applied rejection is respectfully requested.

Respectfully submitted,

Date July 11, 2006

By \_\_\_\_\_



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